

FILED
US DISTRICT COURT
DISTRICT OF NEBRASKA

OFFICE OF THE CLERK

Case Nos. 8:11-cv-401, 8:12-cv-307

**ORDER ON
FINAL PRETRIAL
CONFERENCE**

VS.

Defendant(s).

Joseph Jones and Elizabeth Culhane, for Defendants.

Caution: Upon express approval of the judge holding the pretrial conference for good cause shown, the parties may be authorized to defer listing of exhibits or objections until a later date to be specified by the judge holding the pretrial conference. The mere listing of an exhibit on an exhibit list by a party does not mean it can be offered into evidence by the adverse party without all necessary evidentiary prerequisites being met.

(B) Uncontroverted Facts. The parties have agreed that the following may be accepted as established facts for purposes of this case only:

1. This case involves a class of Plaintiffs consisting of over 52,000 over-the-road truck drivers who worked for Werner Enterprises, Inc. and Drivers Management, LLC (hereinafter, collectively, "Werner"), in Werner's student driver program.

2. During the time class members worked for Werner in the student driver program, the class members rode and drove with an experienced over-the-road truck driver, known as a "driver trainer."

3. Class members recorded their time during the student driver program by electronically inputting their time using one of four duty statuses in a Qualcomm computer unit located in the truck to which each class member was assigned.

4. Class members recorded their time by logging all time on one of four duty statuses:

- Line 1 - Off-duty;
- Line 2 - Sleeper Berth;
- Line 3 - Driving; and
- Line 4 - On Duty, Not Driving.

5. Class members were paid a flat rate during the time they worked for Werner as student drivers. The flat rate was supplemented at times by Werner.

6. Werner only considered Line 3 (Driving) and Line 4 (On Duty, Not Driving) as compensable time.

(C) Controverted and Unresolved Issues. The issues remaining to be determined and unresolved matters for the court's attention are:

Plaintiffs' Statement of the Controverted and Unresolved Issues:

1. Whether class members were on duty continuously for 24 hours or more when class members were working for Werner as over-the-road drivers.
2. Whether Werner's sleeper berths constituted adequate sleeping facilities.
3. Whether the time class members spent in Werner's sleeper berths, in excess of 8 hours per day, while working for Werner as over-the-road truck drivers, was compensable.
4. Whether class members logged more than 8 hours in sleeper berths during continuous on-duty shifts lasting 24 hours or more.
5. The amount of damages Werner must pay to the Plaintiff class.

Defendants' Statement of the Controverted and Unresolved Issues:

1. Because drivers are not entitled to wages for time logged on Line 2 (sleeper berth) unless the driver was required to be on duty continuously for 24 hours or more, the jury must decide whether any class member was required to be on duty continuously for 24 hours or more.
2. The jury must decide whether class members logged more than 8 hours in the sleeper berth during a continuous on-duty shift lasting 24 hours or more.
3. The jury must decide the total number of continuous 24-hour shifts, if any, worked by each driver in the class.
4. The jury must determine the total number of sleeper berth hours in excess of 8, if any, logged by each class member during each 24-hour continuous shift in which the class member was continuously on duty.
5. The jury must determine what amount is due, if any, to each class member for time in excess of 8 hours per day logged during a continuous on-duty shift lasting 24 hours or more.

6. The jury must determine what amount is due, if any, to each class member for certain short rest breaks logged on Line 1 under 29 C.F.R. § 785.18.

7. Whether Plaintiffs have classwide proof of liability for the sleeper berth claims.

8. Whether Plaintiffs have sufficient proof of damages on the sleeper berth claims.

9. Whether Plaintiffs have sufficient proof of damages on the short rest break claims.

10. The Court must determine whether Plaintiffs have classwide proof that drivers were required to remain on duty for 24 hours or more.

11. The Court must determine whether Plaintiffs' claims can be tried on a classwide basis.

12. The Court must determine whether Plaintiffs have a claim under the Nebraska Wage & Hour Act.

13. To the extent class members performed work for which they were not paid, whether such time was de minimis.

14. To the extent class members performed work for which they were not paid, whether Werner had knowledge that class members were performing uncompensated work.

15. Whether class members' claims are barred by the doctrines of estoppel, waiver, laches and/or unclean hands, to the extent claims members recorded their time in violation of Werner's policies for logging time.

16. Whether Plaintiffs can call Dr. Robert Topel as a witness.

Pending Motions:

- a) Werner's Motion to Clarify the Court's February 2, 2017 Order.
- b) Werner's Motion in Limine.
- c) Plaintiffs' Motion in Limine.

(D) Witnesses. All witnesses, including rebuttal witnesses, expected to be called to testify by plaintiff, except those who may be called for impeachment purposes as defined in NECivR 16.2(c) only, are:

1. Phillip Petrone, Representative Plaintiff (to be contacted through Plaintiffs' counsel);
2. Stewart Fisher, Representative Plaintiff (to be contacted through Plaintiffs' counsel);
3. Brian Pankz, Representative Plaintiff (to be contacted through Plaintiffs' counsel);
4. Jasbir Singh, Representative Plaintiff (to be contacted through Plaintiffs' counsel);
5. Rickey Smiley, opt-in Plaintiff (to be contacted through Plaintiffs' counsel);
6. Gregory Proctor, opt-in Plaintiff (to be contacted through Plaintiffs' counsel);
7. Joseph Gambino, opt-in Plaintiff (to be contacted through Plaintiffs' counsel);
8. Tamara Lindsey, opt-in Plaintiff (to be contacted through Plaintiffs' counsel);
9. Craig Campbell, opt-in Plaintiff (to be contacted through Plaintiffs' counsel);
10. Sterling Davidson, opt-in Plaintiff (to be contacted through Plaintiffs' counsel);
11. Mary Kaye Howe;
12. Jaime Maus;
13. Steve Tisinger;
14. Jim Mullen;
15. Richard Kroon; Data Analyst Expert, 75 Rowland Way, Suite 250, Novato CA 9495;

16. All witnesses identified by Defendants in their witness list (the only witness identified not explicitly listed by Plaintiffs is Robert Topel).

[List names and complete addresses of all persons who will testify in person only. Such list shall identify those witnesses the party expects to be present and those witnesses the party may call if the need arises, and shall also identify, by placing an “(F)” following the name, each witness whose only testimony is intended to establish foundation for an exhibit for which foundation has not been waived.

All witnesses expected to be called to testify by Defendants, except those who may be called for impeachment purposes as defined in NECivR 16.2(c) only, are:

1. Jaime Maus, Omaha, Nebraska (to be contacted through defense counsel);

Defendants may also call the following witnesses if the need arises:

1. Phillip Petrone, class representative;
2. Stewart Fisher, class representative;
3. Brian Pankz, class representative;
4. Jasbir Singh, class representative;
5. James Mullen, Omaha, Nebraska (to be contacted through defense counsel);
6. Mary Kaye Howe, Omaha, Nebraska (to be contacted through defense counsel);
7. Steve Tisinger, Omaha, Nebraska (to be contacted through defense counsel);

8. Dr. Robert Topel, Ph.D., Senior Consultant, Charles River Associates, One South Wacker Drive, 34th Floor, Chicago, Illinois 60606;
9. Any witness whose testimony is identified in Werner's deposition designations.
10. Any witness necessary to establish foundation for any document.
11. Any witness listed by Plaintiff and not objected to by Defendants.

It is understood that, except upon a showing of good cause, no witness whose name and address does not appear herein shall be permitted to testify over objection for any purpose except impeachment. A witness whose only testimony is intended to establish foundation for an exhibit for which foundation has not been waived shall not be permitted to testify for any other purpose, over objection, unless such witness has been disclosed pursuant to Federal Rule of Civil Procedure 26(a)(3). A witness appearing on any party's witness list may be called by any other party.

(E) Expert Witnesses' Qualifications.

Experts to be called by plaintiff and their qualifications are:

Richard Kroon. See attached curriculum vitae for qualifications.

Experts to be called by defendant and their qualifications are:

Dr. Robert Topel, Ph.D. See attached curriculum vitae for qualifications.

(F) Voir Dire. Counsel have reviewed Federal Rule of Civil Procedure 47(a) and NECivR 47.2(a) and suggest the following with regard to the conduct of juror examination:

The parties request that each side's attorneys be given 60 minutes to question potential jurors.

(G) Number of Jurors. Counsel have reviewed Federal Rule of Civil Procedure 48 and NECivR 48.1.

Defense counsel suggests that this matter be tried to a jury composed of 12 members.

Plaintiffs' counsel suggests that this matter be tried to a jury composed of 8 members.

(H) Verdict. The parties [will] [will not] stipulate to a less-than-unanimous verdict. (If applicable), the parties' stipulation is: N/A

(I) Briefs, Instructions, and Proposed Findings. Counsel have reviewed NECivR 39.2(a), 51.1(a), and 52.1, and suggest the following schedule for filing trial briefs, proposed jury instructions, and proposed findings of fact, as applicable:

Deadline to submit trial briefs, proposed jury instructions, and proposed findings of fact: **Friday, May 12, 2017.**

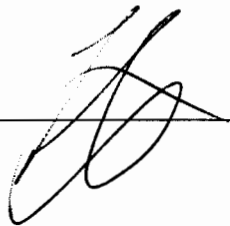
(J) Length of Trial. Counsel estimate the length of trial will consume **not less than 7 day(s), not more than 21 day(s), and probably about 10-14 day(s).**

(K) Trial Date. Trial is set for Tuesday, **May 16, 2017.**

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BY THE COURT:



IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

PHILLIP PETRONE, *et al.*

v.

WERNER ENTERPRISES, INC., *et al.*

LIST OF EXHIBITS

Case Number: 11-CV-401

12-CV-307

Courtroom Deputy:

Court Reporter:

Trial Date(s): Trial Starts MAY 16, 2017

PLF	DF	DESCRIPTION	OFF	OBJ	R C V D	N O T R C V D	DATE
1		WERNER DRIVERS HANDBOOK 2008, WRN- PET0001-0262		R, O (unnecessarily cumulative and/or likely to result in juror confusion, to the extent Plaintiffs intend to offer the entire Handbook)			
2		QUALCOMM MESSAGES FOR PHILLIP PETRONE, WRN-PET0388-0528		R, O (unnecessarily cumulative and/or likely to result in juror confusion, to the extent Plaintiffs intend to offer all messages)			
3		PAYSTUBS FOR PHILLIP PETRONE, WRN-PET0529, 0531, 0533		R, O (cumulative)			

4	EXCERPT OF scplogrcCSV14.CSV showing Phillip Petrone (484852) Driver Logs, Columns A:K	H, O (Foundation)			
5	PAYSTUBS FOR STEWART FISHER, WRN- PET1247-1258	R, O (cumulative)			
6	QUALCOMM MESSAGES FOR STEWART FISHER, WRN-PET1259-1912	R, O (unnecessarily cumulative and likely to result in juror confusion, to the extent Plaintiffs intend to offer all messages)			
7	EXCERPT OF scplogrcCSV6.CSV showing Stewart Fisher (450410) Driver Logs, Columns A:K	H, O (Foundation)			
8	PAYSTUBS FOR BRIAN PANKZ, WRN-PET2009- 2020	R, O (cumulative)			
9	QUALCOMM MESSAGES FOR BRIAN PANKZ, WRN-PET2021-2647	R, O (unnecessarily cumulative and/or likely to result in juror confusion, to the extent Plaintiffs intend to offer all messages)			
10	EXCERPT OF scplogrcCSV12.CSV showing Brian Pankz (469046) Driver Logs, Columns A:K	H, O (Foundation)			
11	PAYSTUBS FOR JASBIR SINGH, WRN-PET2957- 2974	R, O (cumulative)			
12	QUALCOMM MESSAGES FOR JASBIR SINGH, WRN-PET2975-3577	R, O (unnecessarily cumulative and/or likely to result in juror confusion, to the extent Plaintiffs intend to offer all messages)			

13	EXCERPT OF scplogrcCSV1.CSV showing Jasbir Singh (435431) Driver Logs, Columns A:K	H, O (Foundation)			
14-1	prpchkdtsv1.csv or any excerpt thereof	R,* H, O (Foundation)			
14-2	prpchkdtsv2.csv or any excerpt thereof	R,* H, O (Foundation)			
14-3	prpchkhd.csv or any excerpt thereof	R,* H, O (Foundation)			
14-4	prpchkdt 031814.csv or any excerpt thereof	R,* H, O (Foundation)			
14-5	prpchkhd 031814.csv or any excerpt thereof	R,* H, O (Foundation)			
15-1	scplogrcCSV1.csv or any excerpt thereof	R,* H, O (Foundation)			
15-2	scplogrcCSV2.csv or any excerpt thereof	R,* H, O (Foundation)			
15-3	scplogrcCSV3.csv or any excerpt thereof	R,* H, O (Foundation)			
15-4	scplogrcCSV4.csv or any excerpt thereof	R,* H, O (Foundation)			
15-5	scplogrcCSV5.csv or any excerpt thereof	R,* H, O (Foundation)			
15-6	scplogrcCSV6.csv or any excerpt thereof	R,* H, O (Foundation)			
15-7	scplogrcCSV7.csv or any excerpt thereof	R,* H, O (Foundation)			
15-8	scplogrcCSV8.csv or any excerpt thereof	R,* H, O (Foundation)			
15-9	scplogrcCSV9.csv or any excerpt thereof	R,* H, O (Foundation)			
15-10	scplogrcCSV10.csv or any excerpt thereof	R,* H, O (Foundation)			
15-11	scplogrcCSV11.csv or any excerpt thereof	R,* H, O (Foundation)			
15-12	scplogrcCSV12.csv or any excerpt thereof	R,* H, O (Foundation)			
15-13	scplogrcCSV13.csv or any excerpt thereof	R,* H, O (Foundation)			
15-14	scplogrcCSV14.csv or any excerpt thereof	R,* H, O (Foundation)			

15-15		scplogrcCSV15.csv or any excerpt thereof		R,* H, O (Foundation)			
15-16		scplogrcCSV16.csv or any excerpt thereof		R,* H, O (Foundation)			
15-17		scplogrcCSV17.csv or any excerpt thereof		R,* H, O (Foundation)			
15-18		scplogrcCSV18.csv or any excerpt thereof		R,* H, O (Foundation)			
15-19		scplogrcCSV19.csv or any excerpt thereof		R,* H, O (Foundation)			
15-20		scplogrcCSV20.csv or any excerpt thereof		R,* H, O (Foundation)			
15-21		scplogrc 031814.000.csv or any excerpt thereof		R,* H, O (Foundation)			
15-22		scplogrc 031814.001.csv or any excerpt thereof		R,* H, O (Foundation)			
15-23		scplogrc 031814.002.csv or any excerpt thereof		R,* H, O (Foundation)			
15-24		scplogrc 031814.003.csv or any excerpt thereof		R,* H, O (Foundation)			
15-25		scplogrc 031814.004.csv or any excerpt thereof		R,* H, O (Foundation)			
15-26		scplogrc 031814.005.csv or any excerpt thereof		R,* H, O (Foundation)			
15-27		scplogrc 031814.006.csv or any excerpt thereof		R,* H, O (Foundation)			
15-28		scplogrc 031814.007.csv or any excerpt thereof		R,* H, O (Foundation)			
15-29		scplogrc 031814.008.csv or any excerpt thereof		R,* H, O (Foundation)			
15-30		scplogrc 031814.009.csv or any excerpt thereof		R,* H, O (Foundation)			
15-31		scplogrc 031814.011.csv or any excerpt thereof		R,* H, O (Foundation)			
15-32		scplogrc 031814.csv or any excerpt thereof		R,* H, O (Foundation)			
16-1		S01-00 Create All Tables.sql		R, H, O (Foundation)			
16-2		S02-00 Create Table Indexes.sql		R, H, O (Foundation)			
16-3		S03-00-b Add New Fields.sql		R, H, O (Foundation)			

16-4		S04-01-1 Populate tbl_SCPLOGRC_Split.sql		R, H, O (Foundation)			
16-5		S05-01-2 Adjust Elapsed Time.sql		R, H, O (Foundation)			
16-6		S06-01-3 Flag records that should not be counted as breaks.sql		R, H, O (Foundation)			
16-7		S07-01-4 Flag issue records that will be excluded.sql		R, H, O (Foundation)			
16-8		S08-01-5 Flag Line 2 over 72 hours.sql		R, H, O (Foundation)			
16-9		S09-07-a Create Sequential Analysis Table.sql		R,H,O (Foundation)			
16-10		S10-07-b Analyze Sequential Records.sql		R, H, O (Foundation)			
16-11		S11-07-c Analyze Sequential Records.sql		R,H,O (Foundation)			
16-12		S12-07-d Determine Sequential.sqlf		R, H, O (Foundation)			
16-13		S13-07-e Flag affected records.sql		R, H, O (Foundation)			
16-14		S14-17-a Create Sequential Analysis Table Line 2 Only.sql		R, H, O (Foundation)			
16-15		S15-17-b Analyze Sequential Records.sql		R, H, O (Foundation)			
16-16		S16-17-cl Determine Sequential.sql		R, H, O (Foundation)			
16-17		S17-17-c2 Determine Sequential.sql		R,H,O (Foundation)			
16-18		S18-17-d Flag affected records.sql		R, H, O (Foundation)			
16-19		S19-08-a Create Sequential Analysis Table 3-4.sql		R, H, O (Foundation)			
16-20		S20-08-b Analyze Sequential Records 3-4.sql		R, H, O (Foundation)			
16-21		S21-08-c Determine Sequential.sql		R, H, O (Foundation)			
16-22		S22-08-d Flag affected records.sql		R, H, O (Foundation)			
16-23		S23-02 Populate CALC tables.sql		R, H, O (Foundation)			
16-24		S24-03 Calculate 15 minutes		R, H, O			

		damages.sql		(Foundation)			
16-25		S25-03-2 Adjust 15 minutes damages.sql		R, H, O (Foundation)			
16-26		S26-04 Populate tbl_CALC_DailyTimeLine1 and2.sql		R, H, O (Foundation)			
16-27		S27-04-2 Adjust sleeper damages.sql		R, H, O (Foundation)			
16-28		S28-04-3 Flag Line 2 with not 3&4 time in week.sql		R, H, O (Foundation)			
16-29		S29-08 - QA Checks.sql		R, H, O (Foundation)			
16-30		00-Create New Split Table.sql		R, H, O (Foundation)			
16-31		01-1 Populate tbl_SCPLOGRC_Split_New .sql		R, H, O (Foundation)			
16-32		01-2 Adjust Elapsed Time_New.sql		R, H, O (Foundation)			
16-33		01-3 Flag Records.sql		R, H, O (Foundation)			
16-34		01-4 Check Consecutive.sql		R, H, O (Foundation)			
16-35		01-5 Check Consecutive Add.sql		R, H, O (Foundation)			
16-36		01-6 Determine Sequential 12.sql		R, H, O (Foundation)			
16-37		01-7 Determine Max.sql		R, H, O (Foundation)			
16-38		01-8 Finish Max Determine.sql		R, H, O (Foundation)			
16-39		01-9 Flag affected records.sql		R, H, O (Foundation)			
16-40		2-0 Append New Data to Old Tables.sql		R, H, O (Foundation)			
16-41		Append Log Data.sql		R, H, O (Foundation)			
16-42		Append Pay Data.sql		R, H, O (Foundation)			
16-43		Data Check 1.sql		R, H, O (Foundation)			
16-44		Data Check 2.sql		R, H, O (Foundation)			
16-45		Data Check 3.sql		R, H, O			

			(Foundation)			
16-46		Issue 01-Overlapping Dates.sql	R, H, O (Foundation)			
16-47		Issue 02-Start DateTime after End DateTime.sql	R, H, O (Foundation)			
16-48		Issue 03-Flag Large 3 & 4 Lines.sql	R, H, O (Foundation)			
16-49		Issue 04-Elapsed Time do not match.sql	R, H, O (Foundation)			
17		August 1, 2014 Report of Richard Kroon and accompanying spreadsheet	R, H, O (Foundation, Cumulative, Rule 403)			
18		January 12, 2015 Reply Report by Kroon	R, H, O (Foundation, Cumulative, Rule 403)			
19		Defendants' Answer to Second Amended Complaint, 11-cv-401, Doc. No. 93	R, H, O (Werner's pending Motion in Limine; April, 2016 order dismissing certain claims with prejudice; February, 2017 dismissing certain claims with prejudice; Rule 403)			
20		Defendants' Answer to Plaintiffs' Class Action Complaint, 12-cv-307, Doc. No. 14	R, H, O (Werner's pending Motion in Limine; July, 2013 order declining to certify certain claims; April, 2016 order dismissing certain claims with prejudice; February, 2017 dismissing certain claims with prejudice; Rule 403)			
21		Defendants' Answer to Plaintiffs' Amended Collective Action Complaint, 11-cv-401, Doc. No. 37	R, H, O (Werner's pending Motion in Limine; July 2013 order declining to certify certain claims; April, 2016 order dismissing certain claims with prejudice; February,			

			2017 dismissing certain claims with prejudice; Rule 403)			
22		Department of Labor Field Operations Handbook, Chapter 14	R, H, O (Foundation; Court's February, 2017 Order; Werner's Pending Motion in Limine, Rule 403)			
23		Department of Labor Field Operations Handbook, Chapter 31	R, H, O (Foundation; Court's February, 2017 Order; Werner's pending Motion in Limine, Rule 403)			
24		29 C.F.R. § 785.18	R, H, O (Foundation; and Werner's pending Motion in Limine)			
25		29 C.F.R. § 785.21	R, H, O (Foundation; Werner's pending Motion in Limine; Rule 403)			
26		29 C.F.R. § 785.22	R, H, O (Foundation, Werner's pending Motion in Limine)			
27		Nebraska Wage & Hour Act	R, H, O (Werner's pending Motion in Limine, Rule 403)			
28		Nebraska Wage Payment Collection Law	R, H, O (Foundation; Court's April, 2016 order dismissing Plaintiffs' NWPCA claims; Werner's pending Motion in Limine, Rule 403)			
29		29 C.F.R. § 516	R, H, O (Foundation; Werner's pending Motion in Limine; Rule 403)			
30		Part 395 Hours of Service of Drivers Guidance issued by the FMCSA	R, H, O (Foundation; Court's February, 2017 Order; and Werner's			

				pending Motion in Limine)			
31		February 17, 1964 DOL Opinion Letter, 25 BA 407.8		R, H, O (Foundation; Court's February, 2017 Order; and Werner's pending Motion in Limine; Rule 403)			
32		October 6, 1965 DOL Opinion Letter, 25 BA 407.6		R, H, O (Foundation; Court's February, 2017 Order; Werner's pending Motion in Limine; and Rule 403)			
33		November 18, 1966 DOL Opinion Letter, 25 BA 302.5		R, H, O (Foundation; Court's February, 2017 Order; Werner's pending Motion in Limine; and Rule 403)			
34		Train the Trainer Manual, WRN-PET0263-0294		R, Rule 403			
35		Affidavit of John Steele, submitted on behalf of Werner during IRS Appeal, WRN-BAOUCH8918-8926		R, H, O (Foundation; Court's February, 2017 Order; and Werner's Pending Motion in Limine; and Rule 403)			
36		Werner Company Service Announcement: Hours of Service Compliance, 11-cv-401, Doc. No. 338-31		R, H, Rule 403			
37		Exhibit 2 to Deposition of May K. Howe, November 6, 2013		R, H, O (Foundation)			
38		Student Driver Minimum Wage Document, WRN-PET620-621		R, H, Rule 407			
39		Class List provides names and Employee ID numbers for class member, or any excerpt thereof		R, H, O (Foundation, Rule 403)			

40	Defendants' Answers to Interrogatories	R, O (Rule 403; vague because Defendants served several sets of Answers to Interrogatories and Plaintiff has not identified which set or which Interrogatory Answers Plaintiff intends to offer as Exhibit 40. Accordingly, Defendant reserves all specific objections to the content of any particular Interrogatory Answer until Plaintiffs clarify which Interrogatory Answers are referred to herein.).			
41	Defendants' Responses to Plaintiffs' Requests for Documents	R, H, O (Rule 403 and vague: Defendants served several Responses to Requests for Production and Plaintiffs have not identified the specific Responses referred to in Exhibit 41. Accordingly, Defendants reserve all objections to the specific contents of any Response until Plaintiffs clarify which Responses are referred to herein. Also, to the extent Plaintiffs intend by reference to this Exhibit to			

			include all documents produced with any Responses served by Defendants, Defendants reserve all objections to those documents because Plaintiffs have not specifically identified which documents enclosed with Defendants' various Responses are referred to as Exhibit 41.			
42		Defendants' Answer to Plaintiffs' Requests for Admissions	R, H, O (As set forth in Werner's pending Motion in Limine, Plaintiffs did not serve any Requests for Admission on Defendants and Plaintiffs have not produced a copy of the "Responses" referred to as Exhibit 42)			
43		Deposition Transcript of 30(b)(6) Designee Mary K. Howe, April 23, 2013, and all attached exhibits thereto	R, H, O (The portions of the deposition that Plaintiffs intend to use must be designated in Plaintiffs' discovery designations and should be read into the record; to the extent the transcript is marked as an exhibit, it should be for record purposes only and should not be shown to the jury)			
44		Deposition Transcript of 30(b)(6) Designee Jamie	R, H, O (The portions of the			

		Maus, April 23, 2013, and all attached exhibits thereto	deposition that Plaintiffs intend to use must be designated in Plaintiffs' discovery designations and should be read into the record; to the extent the transcript is marked as an exhibit, it should be for record purposes only and should not be shown to the jury)			
45		Deposition Transcript of 30(b)(6) Designee Jim Mullen, April 23, 2013, and all attached exhibits thereto	R, H, O (The portions of the deposition that Plaintiffs intend to use must be designated in Plaintiffs' discovery designations and should be read into the record; to the extent the transcript is marked as an exhibit, it should be for record purposes only and should not be shown to the jury)			
46		Deposition Transcript of 30(b)(6) Designee Steve Tsinger, April 23, 2013, and all attached exhibits thereto	R, H, O (The portions of the deposition that Plaintiffs intend to use must be designated in Plaintiffs' discovery designations and should be read into the record; to the extent the transcript is marked as an exhibit, it should be for record purposes only and should not be shown to the			

				jury)			
47		Deposition Transcript of 30(b)(6) Designee Mary K. Howe, November 6, 2013, and all attached exhibits thereto		R, H, O (The portions of the deposition that Plaintiffs intend to use must be designated in Plaintiffs' discovery designations and should be read into the record; to the extent the transcript is marked as an exhibit, it should be for record purposes only and should not be shown to the jury)			
48		Werner 2013 Driver Handbook (WRN-PET263-294)		R,H,O (Defendants' pending Motion in Limine)			
49		Driver Job Description WRN-PET0617		R, H			
50		Train the Trainer Guidelines, WRN-PET0308		R, H			
51		Acknowledgment of Employment in Nebraska, WRN-PET0329		R, H, Rule 403			
52		Acknowledgment of Employment in Nebraska, WRN-PET1200		R, H, Rule 403			
53		Acknowledgment of Employment in Nebraska, WRN-PET2804		R, H, Rule 403			
54		Acknowledgment of Employment in Nebraska, WRN-PET1963		R, H, Rule 403			
55		Affidavit of Steve Tisinger, 11-cv-401, Doc. No. 10-4		R, H			

56		HOS Final Rule, 11-cv-401, Doc. No. 323-4		H, R, O (Rule 403; Foundation; Court's February, 2017 Order; and Werner's Pending Motion in Limine)			
57		Min. Wage Review and Corresponding Driver Logs for Phillip Petrone (WRN-PET550, 383-385)		H, R, Rule 407			
58		27 Fed. Reg. 3553		H, R, O (Rule 403; Foundation; Court's February, 2017 Order; and Werner's Pending Motion in Limine)			
59		February 3, 1981 Wage and Hour Administrator's Advisory Opinion Letter		H, R, O (Rule 403; Foundation; Court's February, 2017 Order; and Werner's Pending Motion in Limine)			
60		Plaintiffs' Second Amended Complaint, 11-cv-401, Doc. No. 84		R, H			
61		Affidavit of Jaime Maus, 11-cv-401, Doc. No. 64-1		R, H			
62		June 30, 1988, Wage and Hour Administrator's Advisory Opinion Letter		H, R, O (Rule 403; Foundation; Court's February, 2017 Order; and Werner's Pending Motion in Limine)			
63		70 Fed. Reg. 49, 978, 50,047		H, R, O (Rule 403; Foundation; Court's February, 2017 Order; and Werner's Pending Motion in Limine)			
64		September 30, 1964 Wage and hour Administrator's Advisory Opinion Letter		H, R, O (Rule 403; Foundation; Court's February, 2017 Order; and Werner's Pending Motion in Limine)			

65		Printed Driver Logs relating to Named Plaintiffs (Def. Ex. 326, 335, 342, 348)		H, O (Foundation)			
66		Minimum Wage Review and Paystubs for Named Plaintiffs (Def. Ex. 328, 333, 340, 346)		R, H, O (Foundation, Cumulative, Rule 407)			
67		Portions of Werner's Employment Records for Plaintiff Philip Petrone (Def. Ex. 325, WRN-PET000327-332, 335)		R, H, O (Foundation, Cumulative, Rule 403)			
68		Portions of Werner's Employment Records for Plaintiff Stewart Fisher (Def. Ex. 331, WRN-PET 1187-1188, 1200, 1210)		R, H, O (Foundation, Cumulative, Rule 403)			
69		Portions of Werner's Employment Records for Plaintiff Brian Pankz (Def. Ex. 338, WRN-PET 1953-1957, 1963-1964, 1968-1973)		R, H, O (Foundation, Cumulative, Rule 403)			
70		Portions of Werner's Employment Records for Plaintiff Brian Pankz (Def. Ex. 344, WRN-PET 2767, 2772-2776, 2798, 2801-2805, 2840, 2842-2843, 2845)		R, H, O (Foundation, Cumulative, Rule 403)			
		All discovery and depositions designated by Plaintiffs		Defendants reserve all objections because the parties have not yet exchanged discovery and deposition designations. (See Filing 328).			

		All discovery and depositions designated by Defendants		Defendants reserve all objections because the parties have not yet exchanged discovery and deposition designations. (See Filing 328).			
		Demonstrative Exhibits consisting of summations, enlargements, call-outs, and presentations of any of the exhibits listed herein.		Defendants object to the extent Plaintiff intends to offer a demonstrative exhibit referencing any exhibit listed above to which Defendants have objected			
		Any additional exhibits necessary to establish foundation		Defendants reserve all objections to unidentified foundational exhibits until those exhibits are specifically identified and produced to undersigned counsel for inspection.			
		Plaintiffs reserve the right to offer any and all exhibits listed or offered by Defendants not object to by Plaintiffs		To the extent Defendants listed an exhibit but do not offer it at trial, Defendants reserve all objections to Plaintiffs' efforts to introduce that exhibit until the specific exhibit at issue is identified.			

OBJECTIONS

R: Relevancy

H: Hearsay

A: Authenticity

O: Other (specify)

*** Defendants object on relevance to Plaintiffs' Exhibits 14-1 through 15-32 to the extent those exhibits reference any information regarding drivers who have opted out of the Rule 23(b)(3) class action.**

1647948v4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

PHILIP PETRONE,

Plaintiff,

vs.

WERNER ENTERPRISES, INC.
d/b/a WERNER TRUCKING and
DRIVERS MANAGEMENT, LLC,

Defendants.

CIVIL ACTION: 8:11-cv-00401

DEFENDANTS' EXHIBIT LIST

PHILIP PETRONE, et al.,

Plaintiffs,

vs.

WERNER ENTERPRISES, INC.
d/b/a WERNER TRUCKING and
DRIVERS MANAGEMENT, LLC,

Defendants.

CIVIL ACTION: 8:12-cv-00307

COME NOW the Defendants, Werner Enterprises, Inc. and Drivers Management, LLC (collectively, "Werner"), by and through their counsel of record and pursuant to ¶3.C of the Court's Amended Final Progression Order (Filing 402), and set forth the following list of exhibits which Werner expects to introduce during the trial of this matter,

EACH SUBJECT TO OFFER:

Trial Start Date: May 16, 2017

EXHIBIT NO.		DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
PLF	DF						
	301	Plaintiffs' Collective Action Complaint, September 12, 2011 (Filing 1, Case No. 11-cv- 401)		R (403), H, O (foundation)			

EXHIBIT NO.							
PLF	DF	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
	302	Plaintiffs' Class Action Complaint, filed in Pennsylvania State Court, October 19, 2011		R (403), H, O (foundation)			
	303	Plaintiffs' Amended Collective Action Complaint, December 21, 2011 (Filing 33, Case No. 11-cv-401)		R (403), H, O (foundation)			
	304	Plaintiffs' Class Action Complaint, August 28, 2012 (Filing 1, Case No. 12-cv-307)		R (403), H, O (foundation)			
	305	Plaintiffs' Second Amended Collective Action and Class Action Complaint, October 11, 2012 (Filing 84, Case No. 11-cv-401)			✓		
	306	Plaintiffs' Reply Brief in Support of Plaintiff's Motion for Conditional Certification Pursuant to the FLSA (Filing 65, Case No. 11-cv-401)		R (401, 403) H, O, (foundation)			
	307	Plaintiffs' Reply Brief in Support of Motion for Class Certification (Filing 49, Case No. 12-cv-307)		R (401, 403) H, O, (foundation)			
	308	Plaintiffs' Brief in Opposition to Werner's Motion to Compel (Filing 218, Case No. 11-cv-401)		R (401, 403) H, O, (foundation)			
	309	Plaintiffs' Brief in Support of Motion for Partial Summary Judgment as to Liability (Filing 322, Case No. 11-cv-401)		R (401, 403) H, O, (foundation)			
	310	Portions of June, 2008 Werner Driver Handbook (WRN-PET000001-262)			✓		

EXHIBIT NO.							
PLF	DF	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
	311	Portions of Federal Motor Carrier Safety Regulations Pocketbook (WRN-PET000670-952)		R (401, 403) H, O (foundation)			
	312	Pay Log Data Spec Document, produced on August 30, 2013		H, O (foundatio n)			
	313	Portions of scplogrc.csv (CSV files produced on August 30, 2013)		1006 (Complete ness)			
	314	Portions of prpchkhd.csv (CSV files produced on August 30, 2013)		1006 (Complete ness)			
	315	Portions of prpchkdt.csv (CSV files produced on August 30, 2013)		1006 (Complete ness)			
	316	Portions of scplogrc.csv (CSV files produced on March 24, 2014)		1006 (Complete ness)			
	317	Portions of prpchkhd.csv (CSV files produced on March 24, 2014)		1006 (Complete ness)			
	318	Portions of prpckdt.csv (CSV files produced on March 24, 2014)		1006 (Complete ness)			
	319	Werner Drop Off Messages or any portion thereof (Excel file produced on May 23, 2014)		R (401, 403) H, A, BE, O, (foundation)			
	320	Position Description: OTR Driver, Truckload (WRN-PET000617)			✓		

EXHIBIT NO.							
PLF	DF	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
	321	Driver Progress Report (WRN-PET000568-571)		R (401, 403) H, O, (foundation)			
	322	Richard Kroon's August 1, 2014 Expert Report and Damage Calculation Spreadsheets or any portion thereof			✓		
	323	Richard Kroon's April 11, 2014 Expert Report and Damage Calculation Spreadsheets or any portion thereof		R (403) H			
	324	Richard Kroon's January 14, 2014 Expert Report and Damage Calculation Spreadsheets or any portion thereof		R (403) H			
	325	Portions of Werner's Employment Records for Plaintiff Philip Petrone (WRN-PET000327-378)		R (401/403), H, BE, A (foundation). No obj. to doc Listed in P. Ex. 67			
	326	Printed Driver Logs for Plaintiff Philip Petrone (WRN-PET000379-387)			✓		
	327	Portions of Werner Status Event Worksheets for Plaintiff Philip Petrone (WRN-PET000622-669)		R (401/403), H, BE, A (foundation)			
	328	Portions of Statements of Earnings and Student Payroll Minimum Wage Reviews for Plaintiff Philip Petrone (WRN-PET000529-534)			✓		

EXHIBIT NO.							
PLF	DF	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
	329	Portions of Qualcomm messages sent to or received by the truck(s) to which Plaintiff Philip Petrone was assigned (WRN-PET000388-528)			✓		
	330	Portions of Werner AS400 Printouts of Loads for Plaintiff Philip Petrone (WRN-PET000553-567)			✓		
	331	Portions of Werner's Employment Records for Plaintiff Stewart Fisher (WRN-PET 001160-1226)		R (401/403), H, BE, A (foundation) No obj. to doc Listed in P. Ex. 68			
	332	Portions of Status Event Worksheets for Plaintiff Stewart Fisher (WRN-PET001127-1235)		R (401/403), H, BE, A (foundation)			
	333	Portions of Statements of Earnings and Student Payroll Minimum Wage Reviews for Plaintiff Stewart Fisher (WRN-PET001236-1258)			✓		
	334	Portions of Qualcomm messages sent to or received by the truck(s) to which Plaintiff Stewart Fisher was assigned (WRN-PET001259-1912)			✓		
	335	Printed Driver Logs for Plaintiff Stewart Fisher (WRN-PET001913-1928)			✓		
	336	Sworn Declaration of Plaintiff Stewart Fisher, May 31, 2012 (Filing 53-2, Case No. 11-cv-401)		R (401/403), H, BE, A (foundation)			

EXHIBIT NO.							
PLF	DF	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
	337	Documents Produced by Plaintiff Philip Petrone on May 14, 2012, or any relevant portions thereof (PPP00000001-77)		R (401/403), H, BE, A (foundation)			
	338	Portions of Werner's Employment Records for Plaintiff Brian Pankz (WRN-PET 001929-1986)		R (401/403), H, BE, A (foundation) No obj. to doc Listed in P. Ex. 69			
	339	Portions of Werner Status Event Worksheets for Plaintiff Brian Pankz (WRN-PET001987-1996)		R (401/403), H, BE, A (foundation)			
	340	Portions of Statements of Earnings and Student Payroll Minimum Wage Reviews for Plaintiff Brian Pankz (WRN-PET001997-2020)			✓		
	341	Portions of Qualcomm messages sent to or received by the truck(s) to which Plaintiff Brian Pankz was assigned (WRN-PET002021-2647)			✓		
	342	Printed Driver Logs for Plaintiff Brian Pankz (WRN-PET002648-2669)			✓		
	343	Sworn Declaration of Plaintiff Brian Pankz, May 16, 2012, Filing No. 53-3 in Case No. 11-cv-401		R (401/403), H, BE, A (foundation)			

EXHIBIT NO.							
PLF	DF	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
	344	Portions of Werner's Employment Records for Plaintiff Jasbir Singh (WRN-PET002670-2853)		R (401/403), H, BE, A (foundation) No obj. to doc Listed in P. Ex. 70			
	345	Portions of Werner Status Event Worksheets for Plaintiff Jasbir Singh (WRN-PET002854-2946)		R (401/403), H, BE, A (foundation)			
	346	Portions of Statements of Earnings and Student Payroll Minimum Wage Reviews for Plaintiff Jasbir Singh (WRN-PET002947-2974)			✓		
	347	Portions of Qualcomm messages sent to or received by the truck(s) to which Plaintiff Jasbir Singh was assigned (WRN-PET002975-3577)			✓		
	348	Printed Driver Logs for Plaintiff Jasbir Singh (WRN-PET003578-3604)			✓		
	349	Opt-In Consent Form for any driver who opted into the collective action (Case No. 11-cv-401)			✓		
	350	Defendant's August, 2013 List of Class Members in Case No. 12-cv-307 (produced via CD on August 30, 2013)			✓		

EXHIBIT NO.							
PLF	DF	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
	351	Defendant's December, 2013 List of Class Members in Case No. 12-cv-307 (produced via CD on December 23, 2013)			✓		
	352	Qualcomm Device		Not Produced During Discovery. R (401/403), C, Waste (foundation)			
	353	Qualcomm Message Reference Card and Driver Messages document (WRN-PET000618-619)			✓		
	354	Train the Trainer Manual (WRN-PET000263-295)			✓		
	355	CLC Check Inn ID Card Request Form for Trainers (WRN-PET000296)		R (401/403), Waste (foundation)			
	356	Safety Specialists and Train the Trainer Manual Course Packet (WRN-PET000297-305)		R (401/403), (foundation)			
	357	Sample Paper Load Form, Paper Driver Log, and Paper Vehicle Inspection Report (WRN-PET000306-307)		R (401/403), H, BE, Waste (foundation)			
	358	Train the Trainer Guidelines for Electronic Logging (WRN-PET000308)			✓		

EXHIBIT NO.							
PLF	DF	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
	359	Trainee Skill Evaluation form (WRN-PET000310)		R (401/403), H, BE, Waste (foundation)			
	360	Student Pay Minimum Wage Requirements Document (WRN-PET000620-621)			✓		
	361	List of drivers who opted into the collective action under the Fair Labor Standards Act (Case No. 11-cv-401)		R (401/403), H, BE, Waste (foundation)			
	362	List of drivers who opted out of the Rule 23 Class Action (Case No. 12-cv-307)		R (401/403), H, BE, Waste (foundation)			
	363	All discovery responses and deposition testimony designated by Defendants.		<i>Not yet known.</i>			
	364	All discovery responses and deposition testimony designated by Plaintiffs and not objected to by Defendants.			✓		
	365	Demonstrative exhibits consisting of enlargements of any of the exhibits listed herein.		<i>Not yet known.</i>			
	366	Defendants reserve the right to offer any and all additional exhibits necessary to establish foundation.		<i>Not yet known.</i>			
	367	Defendants reserve the right to offer any and all exhibits listed or offered by Plaintiffs and not objected to by Defendants.					

EXHIBIT NO.							
PLF	DF	DESCRIPTION	OFF	OBJ	RCVD	NOT RCVD	DATE
	368	Defendants reserve the right to offer any and all additional exhibits necessary for rebuttal or impeachment.		<i>Not yet known.</i>			
	369	Defendants reserve the right to offer additional exhibits obtained prior to trial including, but not limited to, additional records not yet received.		<i>Not yet known.</i>			

OBJECTIONS

R: Relevancy

H: Hearsay

A: Authenticity

O: Other (specify)